

Appl. No. 09/319,649  
Amdt. dated November 1, 2003  
Reply to Office action of July 16, 2003

#### REMARKS

Reconsideration is respectfully requested.

This response is requested to be employed in place of the response Faxed to the U.S. Patent and Trademark Office on October 10, 2003. An additional fee for further extension is enclosed herewith. If such fee is not required, refund is respectfully requested.

Applicant's attorney wishes to thank the Examiner for the courtesy extended on the telephone Friday October 31, 2003, when it was discussed that this supplemental response would be filed. The Examiner requested that applicant include reference to the specific claims and claim elements that are being discussed in the remarks, so applicant's attorney is submitting this revised supplemental response incorporating the information applicants wished to modify and also to address the points the Examiner asked to be clarified. As mentioned to the Examiner on the telephone, what applicants are modifying in this supplemental response is as follows: Applicants argued previously that applicant's invention applied to over the air radio broadcast only and the cited art of Herz and Walsh were applicable to cable (see applicant's response submitted October 10, 2003, paragraph at bottom of page 16 through top of page 17). Applicants wish to withdraw this specific argument as it is respectfully submitted that applicants' invention is also applicable to broadcasts, whether on cable or on the air, and

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the invention of applicants is not restricted to over the air broadcast.

Further, since the applicants' other arguments presented hereinbelow are believed to support the patentability of the claims, in that Herz relates to predictive methods for pre-feeding shows based on a predicted likelihood of a show being selected, it does not teach or suggest what applicants claim.

Applicants also wish to thank the Examiner for noting the typographical error that omitted the word "not" when applicants were arguing that Herz did not teach the concept of claim 3. This typographical error is corrected herein. It was apparent from the argument being made that the intention was that Herz did not teach the concept.

Applicants now present the previously submitted remarks (modified somewhat to include reference to specific claim elements and points and to remove the over the air/cable arguments noted above):

Claims 1-3, 4-8 and 10-25 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over Herz et al (US 5758257) in view of Welsh (US 5374951) and Williams et al (US 5977964). Applicants respectfully traverse this rejection.

Herz is related to a system for attempting to predict customer preferences and pre-scheduling a number of video programs to that particular customer based on a customer preference profile. The document discusses that a fixed number

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of video transmission channels are available and schedules a number of preferred (in accordance with the profile) videos based on that profile until the number of channels is zero. The column 4 section that the Examiner refers to is discussing the user profile and mentions that the profile may be different for times of days and days of weeks (that is, the customer's preference for type of video program may be different at different times and days). Note also that the profile has nothing to do with individual particular videos, but instead relates to characteristics for classifying videos such as under directors (that is, names of directors), actors (particular actors' names), degree of sex or violence. Then, separate and unrelated to what is taking place in the customer profile, each video has a profile associated with the video that indicates the degree of content in that video for the various characteristics.

Then, the system of Herz attempts to make a calculated determination of the most likely videos that the particular customer would choose to view and provides those videos over the available numbers of channels, up to the number of channels available.

A simple way to describe what is happening is that the Herz system ranks available videos according to a customer's perceived preference profile and makes the top "n" videos available (where "n" is the number of transmission channels that are available).

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Herz "monitors" which programs were accessed or watched by a user. There is no indication within Herz of whether the act of simply selecting a program for as short a period of, for example, just one minute, qualifies as "watching" it. It says the return data collection can be either wired or wireless. It does not teach that the information having at least one of a start view time, an end view time, and a difference between the start and end view time is transmitted. Independent claims 1, 6, 11, 17, 22 and 24 recite this concept, as do the remaining claims (which depend thereon), and it is respectfully submitted that this concept provides patentability to applicants' claims.

Applicants respectfully disagree with the Examiner's assertion that Herz takes the opportunity of making use of the Internet to perform any functions as needed by a user. This is proposed by applicants, not Herz. Herz doesn't show or suggest this. Applicants' claims 3, recites "by making use of opportunities of the viewer's accessing the Internet". Claims 8, 12, 13, 17, 21, 22, 24 and their respective dependent claims all include this concept. It is respectfully submitted that in light of this, these various claims and their dependent claims are allowable. Applicants' invention advantageously employs opportunities that arise from a viewer accessing the Internet to transfer data, rather than making a separate access to the Internet.

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Also, the Examiner's comment on page 3 of the office action regarding claim 3 confused applicants' attorney a bit. Here The Examiner is stating that limitations from the specification are not read into the claims. However, the specific limitation in question does appear in the claims (for example, in claim 3) stating "by making use of opportunities of the viewer's accessing the Internet". The Examiner's comment is one that would be made in the case of arguing a limitation that is not in the claim. Since the limitation in question is in the claim in question, applicants respectfully request reconsideration of this particular point.

The Examiner points to Herz col. 51, lines 5-8 and Williams column 8 line 51 as showing use of the user's accessing the Internet. These locations in these referenced documents do not teach what is claimed. Herz is stating that the invention's concepts might also be applied to use of the internet, attempting to predictively pre-schedule and pre-feed information that a user is likely to want to obtain from the internet. It does not teach or suggest the concept of claim 3 (or claims 8, 12, 13, 17, 21, 22, 24 and their respective dependent claims) of making use of opportunities of the viewer's accessing the internet in order to obtain TV program table data or to transfer viewer ID and program information. Similarly, Williams is stating that the database can be updated periodically by phone/network, but it does not

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state that the opportunity of the user accessing the internet is advantageously employed to accomplish this.

The Examiner asserts in the office action that, at column 4 line 59 through column 5 line 4, Herz shows obtaining viewed channel information and obtaining a program ID of a viewed program. Such a concept is not taught in this portion of Herz. However, at column 6, lines 56-65, it is indicated that the customer's set top terminal is polled to retrieve stored data indicating which video was watched. This information is then used to update the customer profile in an attempt to better predict what videos the customer might wish to watch for future preselection of videos to feed to the customer. It is not employed to

The Examiner disagrees with applicants' earlier arguments that Welsh simply detects the encoded signal. The Examiner argues that Welsh "produces" the character strings encoded in the TV signal. Applicants respectfully traverse the rejection and do not believe the Examiner's interpretation of Welsh is warranted. The term "detect" in this context of applicants' claims is different from the context of Welsh. The use of the term "produce" in Welsh here is more appropriately "reproduce" which might be considered a synonym for "detect" in the concept of receiving signals. It is respectfully submitted that Welsh is not teaching or suggesting what applicants claim.

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Further, another consideration is that Herz is not at all concerned with television broadcast in the conventional sense of signals broadcast via radio frequency propagation. Instead Herz is for application in a cable television or similar multiple channel video signal transmission system. Welsh also is related to cable television (CATV) even though it uses the term broadcast, but the sense in Welsh is broadcasting over a cable television system. Thus, applicants' claims all include that they relate to "TV programs planned to be broadcast in that area". It is clear from applicants' specification that this relates to "over the air" broadcasts, not cable television. The issues between the two types of services can be different and it is respectfully submitted that one would not look to the Welsh or Herz documents that relate to cable television when producing an invention such as applicants' which is related to broadcast television.

In summary, since applicants respectfully submit that the Examiner's interpretation of what Herz discusses at column 4 line 59 and following is not warranted (the Examiner says Herz teaches viewed channel information here, but Herz teaches general statistical characteristics of a profile here which might vary by time of day or day of week, not channel information and time), applicants respectfully submit that the claims in general are neither taught nor suggested by the proposed documents, whether

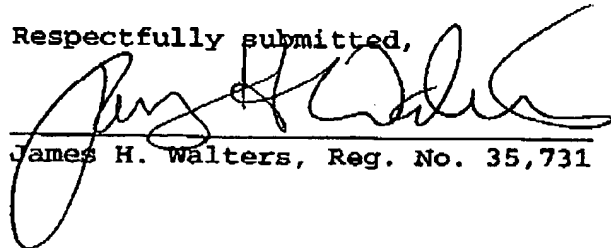
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considered alone or whether combined. Therefore claims 1-25 are submitted to be allowable.

Further applicants respectfully assert that the concept of using the opportunity of the user accessing the internet is neither taught nor suggested by the documents and combinations proposed by the Examiner. This concept appears in claims 3, 8, 12 and 17-25. Therefore, claims 3, 8, 12 and 17-25 are submitted to be allowable for additional reasons.

In light of the above noted amendments and remarks, this application is believed in condition for allowance and notice thereof is respectfully solicited. The Examiner is asked to contact applicants' attorney at 503-224-0115 if there are any questions or if further information is needed.

Respectfully submitted,

  
James H. Walters, Reg. No. 35,731

Customer number 802  
DELLETT AND WALTERS  
Suite 1101  
310 S.W. Fourth Avenue  
Portland, Oregon 97204 US  
(503) 224-0115  
DOCKET: Y-163

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